

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/15/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

JOHNNIE WORLEY,)	Court of Appeals
)	Division One
Petitioner,)	No. 1 CA-IC 11-0006
)	
v.)	DEPARTMENT D
)	
THE INDUSTRIAL COMMISSION OF)	MEMORANDUM DECISION
ARIZONA,)	
)	(Not for Publication -
Respondent,)	Rule 28, Arizona Rules
)	of Civil Appellate
HONEYWELL INTERNATIONAL, INC.,)	Procedure)
)	
Respondent Employer,)	
)	
HONEYWELL INTERNATIONAL/MATRIX,)	
)	
)	
Respondent Carrier.)	
_____)	

Special Action--Industrial Commission

ICA CLAIM NO. No. 20093-200040

CARRIER NO. No. 2345514

Administrative Law Judge Karen Calderon

AWARD AFFIRMED

Johnnie Worley
In *Propria Persona* Petitioner

Phoenix

Andrew Wade, Acting Chief Counsel
The Industrial Commission of Arizona
Attorney for Respondent

Phoenix

G E M M I L L, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review for a denial of benefits. For the following reasons, we affirm.

JURISDICTION AND STANDARD OF REVIEW

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") Sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10. In reviewing findings and awards of the ICA, we defer to the Administrative Law Judge's ("ALJ") factual findings but review questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

FACTS AND PROCEDURAL HISTORY

¶3 Worley, a coordinator for Honeywell, claimed he collided with another coordinator in October 2009, injuring his right knee. Worley filed for workers' compensation benefits. His claim for benefits was denied in December 2009.

¶4 Worley appealed the denial, and a hearing was conducted

in May, July, and August 2010. Over the course of the hearing, the witnesses included Worley, three Honeywell employees, and two examining physicians.

¶15 Worley testified that on October 27, 2009, while entering a building and pushing and pulling carts, he collided with another coordinator, Albert James, who was heading in the opposite direction. Worley alleged that one of the carts rolled over his right heel, bending him forward and injuring his right knee, with the pain in his Achilles tendon and heel. Worley admitted that he did not inform a supervisor about the injury that day, and he continued to work until 11 p.m. that evening. Worley admittedly did not attempt to report the injury until Saturday, October 31. He testified that he attempted to inform a supervisor, Dan Bookout, but Bookout informed him that "he was too busy at the time to do the accident report." Worley stated that he was "devastated," and he did not inform anyone else about the injury that day. On November 2, Worley discovered that Bookout had not yet turned in the paperwork. On November 4 and 5, Worley attempted to notify the director, Amy, but she was unavailable. Worley testified he then notified his manager, Mike Fannucci, about the injury on November 5, and Fannucci went "ballistic."

¶16 In contrast, James testified Worley did not appear injured after the collision. Instead, according to James, Worley just "continued on his way" following the collision. In addition,

Bookout testified Worley came into his office on October 31 and informed him that "his legs were sore . . . and he asked me what [are] some good leg exercises." Worley did not mention that he had injured his knee, and instead Worley told Bookout that "a couple of weeks ago . . . he had hurt his ankle near the truck and trailer."

¶17 Fanucci, a supply chain manager at Honeywell, testified that on November 5, Worley informed him that he had "brushed the back of his calf with a cart" a week prior. Worley lifted up his pant leg, showed Fanucci his calf, and stated "[I]t's swollen." Fanucci could not tell whether the calf was in fact swollen, but he recommended Worley see a doctor.

¶18 Dr. Hammond testified that he saw Worley on November 7. Worley complained of pain in his right knee, from moving some gear around a horse trailer, and an older injury to the gastroc muscle¹ and the Achilles tendon. Worley claimed both injuries occurred at work. Dr. Hammond diagnosed Worley as having "knee strain with a possible injury to the medial meniscus," and he recommended an MRI for further examination. Dr. Hammond also opined that the knee strain was a result of the injury related to the horse trailer and not related to the Achilles injury.

¶19 Dr. Domer, an orthopedic surgeon, testified Worley came

¹ The gastrocnemius muscle is "the chief muscle of the calf of the leg, which flexes the knee and foot. It runs to the Achilles tendon from two heads attached to the femur." The New Oxford American Dictionary 696 (2nd ed. 2005).

to see him in November 2009, complaining of knee pain in his right knee because "he was pushing and pulling a cart at work when another co-worker actually ran into him." Dr. Domer ordered an MRI, which revealed a tear of his medial meniscus, and Dr. Domer performed surgery on Worley in January 2010 to repair the injured knee.

¶10 The ALJ issued her Decision Upon Hearing and Findings and Award in October 2010. The ALJ found:

Upon a review of the totality of the evidence, I find the applicant not credible. Accordingly, any conflicts in the evidence are resolved against the applicant.

The medical evidence does not support any finding that the applicant injured his Achilles tendon. The applicant did not file any claim for an injury to his knee. I find the testimony of Mr. James to be credible that the applicant did not injure himself at the time of the collision incident. The applicant has not filed a claim for an injury while loading a cart onto the horse trailer. Accordingly, the applicant's claim for industrial injury sustained on October 27, 2009 is denied.

Upon review, the ALJ affirmed its decision in December 2010.

ANALYSIS

¶11 As an initial matter, we note that Worley does not adequately develop and support his argument in his opening brief. See ARCAP 13(a)(6) (The appellant's brief should include "[a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with

citations to the authorities, statutes and parts of the record relied on."). Because we "prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds," *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), we construe Worley's argument to be a challenge to the sufficiency of the evidence to support the ALJ's findings. In other words, we understand Worley to be arguing that we should set aside the award because the evidence is insufficient to support the denial of compensation as determined by the ALJ.

¶12 The ALJ determines the credibility of witnesses, *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz.App. 432, 434, 513 P.2d 970, 972 (1973), and resolves conflicts in the evidence. *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). By witnessing or at least hearing the testimony of the witnesses, the ALJ is in the best position to evaluate credibility and resolve conflicts in the evidence. See *Adams v. Indus. Comm'n*, 147 Ariz. 418, 420, 710 P.2d 1073, 1075. (App. 1985). Additionally, the ALJ "may reject testimony if it is self-contradictory, inconsistent with other evidence, or directly impeached." *Phelps v. Indus. Comm'n of Ariz.*, 155 Ariz. 501, 506, 747 P.2d 1200, 1205 (1987).

¶13 Worley asserted that he was injured after he collided with James while pushing and pulling a cart into a building. Worley testified that when he collided with James, he was

"hollering" and fell "down to [his] knees." Worley's account of the events differed significantly from that of the other witnesses at trial. Specifically, James's testimony differed from Worley's because James believed Worley did not appear to be injured after the incident. James testified Worley "continued on his way" following the collision. Worley admitted that he continued to work until 11:00 that evening. The ALJ found James's testimony "to be credible that [Worley] did not injure himself at the time of the collision incident."

¶14 In addition, while Worley testified that he attempted to report the injury to Bookout, Bookout testified that Worley informed him that he had injured his ankle a couple of weeks ago, but never reported that he suffered a knee injury four days prior. Furthermore, when Worley reported the collision to Fanucci, a week following the incident, he complained that he "brushed the back of his calf with a cart." Additionally, Dr. Hammond testified that Worley's knee strain was a result of another injury, related to moving some gear around a horse trailer, and was unrelated to the injury to Worley's Achilles tendon. The testimony supports the ALJ's finding that Worley did not suffer a knee injury on October 27, 2009, following a collision with James. Other testimony at the hearing conflicted with Worley's account of the events, and the ALJ was entitled to select the testimony she felt was most persuasive. See *Phelps*, 155 Ariz. at 506, 747 P.2d at 1205. The evidence is

sufficient to support the ALJ's credibility findings and the accompanying conclusion of noncompensability.

CONCLUSION

¶15 Because the record supports the ALJ's decision, we affirm.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Presiding Judge

_____/s/_____
MAURICE PORTLEY, Judge